HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18469 OF 2007

Between:

S. Ramasubba Reddy

…Petitioner

AND

The Pulivendula Municipality
Rep., by its Commissioner, Pulivendula,
Kadapa District

...Respondent

: O R D E R :

Counsel for the petitioner : Shri V.R. Reddy Kovvuri

Counsel for the respondent : Shri S.I. Newton

August 31, 2007

Per G.S.SINGHVI, CJ

This is a petition for quashing order dated 28-8-2007 passed by Commissioner, Pulivendula Municipality for removal of the alleged unauthorized construction made by the petitioner on the high road margin/road margin in Gopi Vihar Street.

A perusal of the record shows that Writ Petition No. 16225 of 2007 filed by the petitioner for restraining the respondent from demolishing the construction raised by him was disposed of by this Court by directing the officer concerned to consider the objections of the petitioner and decide the same by passing a speaking order. This is evinced from the operative part of order dated 31.7.2007 passed by the Division Bench, which reads as under;

> "Hence, the writ petition is disposed of in the following terms:
>
> a) The notice impugned in the petition shall be treated as a show cause notice.
>
> b) Within two weeks from today the petitioner may, if so advised, file written reply to the show cause notice and produce documentary evidence to show that he has not encroached on the road margin/public drain.
>
> c) Within next two weeks the Commissioner, Pulivendula Municipality shall decide the representation of the petitioner by recording a speaking order, which shall be communicated to him at the end of two weeks period.
>
> d) If the petitioner feels aggrieved by the order to be passed hereinafter, then he shall be free to avail appropriate legal remedy."

In the purported compliance of the direction given by the Court, Commissioner, Pulivendula Municipality passed the order under challenge, the relevant portion of which is extracted below:

SPEAKING ORDER

Municipal Office,
Pulivendula.

As per the directions issued in the W.P.No:16225 of 2007 Sri S. Rama Subba Reddy S/o. Late S. Subba Reddy, Proprietor S.S.R Lodge, Gopi Vihar Street is here by informed that your building in Gopi Vihar Street is encroached in to High Road margin and road margin as per field No: 201 and 203 to an extent of 51x38 links (10.20 Mts x 7.60 Mts) as per the Revenue Records given by the Tahsildar, Pulivendula.

Hence your are here by informed that please to remove the constructions made in the said field No:201 and 203 with in 'Three' days.

Commissioner
Pulivendula Municipality

We have heard Shri V.R. Reddy Kovvuri, learned counsel for the petitioner and Shri S.I. Newton, learned counsel for the respondent and are convinced that the order under challenge cannot, by any stretch of imagination be treated as a speaking order as understood in legal parlance.

We would have delved into the matter in detail but the necessity of doing so has been obviated, because Shri S.I. Newton very fairly stated that he would advise the officer concerned to pass fresh order detailing the reasons for holding that the petitioner has encroached on high road margin/road margin.

In view of the statement made by the learned counsel for the respondent, the writ petition is disposed of with the following directions:

1) The order under challenge shall be treated as inoperative and ineffective and shall not be implemented.

2) The officer concerned shall pass appropriate speaking order within a maximum period of two weeks from today and communicate the same to the petitioner.

3) If the petitioner feels aggrieved by the order, which may be passed hereinafter, then he shall be free to avail appropriate legal remedy.

As a sequel to disposal of the writ petition, WPMP No. 23701 of

2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 31, 2007

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